

1 **Randy M. Andrus, Esq. (116745)**

2 **ANDRUS & ASSOCIATES**

3 620 Coolidge Drive, Suite 165

4 Folsom, California 95630-3183

5 Telephone: (916) 608-9090

6 Attorneys for Defendants

7 **JUAN MANUEL NUNEZ**, individually,

8 **JUAN MANUEL NUNEZ**, individually and

9 doing business as **ACEQUIA CEMENT**, and

10 **ACEQUIA CEMENT**

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **THE BOARD OF TRUSTEES**, in their)
capacities as Trustees of the **LABORERS**)

14 **HEALTH AND WELFARE TRUST**)

15 **FUND FOR NORTHERN**)

16 **CALIFORNIA; LABORERS**)

17 **VACATION-HOLIDAY TRUST**)

18 **FUND FOR NORTHERN**)

19 **CALIFORNIA; LABORERS**)

20 **PENSION TRUST FUND FOR**)

21 **NORTHERN CALIFORNIA; and**)

22 **LABORERS TRAINING AND**)

23 **RETRAINING TRUST FUND FOR**)

24 **NORTHERN CALIFORNIA,**)

25 Plaintiffs,

26 v.

27 **JUAN MANUEL NUNEZ**, individually,)

28 **JUAN MANUEL NUNEZ**, individually)

and doing business as **ACEQUIA**)

CEMENT, and **ACEQUIA CEMENT**)

Defendants.)

CASE NO.: CV 08 3510 CRB

**NOTICE OF MOTION AND MOTION
TO DISMISS FOR IMPROPER VENUE,
FAILURE TO STATE A CLAIM UPON
WHICH RELIEF CAN BE GRANTED, OR,
MOTION FOR A MORE DEFINITE
STATEMENT**

[*FRCP*, Rules 12(b)(3), (6), 12(e)]

DATE: November 7, 2008

TIME: 10:00 a.m.

CTRM: 8, 19th Floor

JUDGE: Hon. Judge Charles R. Breyer

MOVING PARTY:

**DEFENDANTS, JUAN MANUEL NUNEZ and
ACEQUIA CEMENT**

Randy M. Andrus, Esq. (116745)

ANDRUS & ASSOCIATES

620 Coolidge Drive, Suite 165

Folsom, California 95630-3183

Telephone: (916) 608-9090

Attorneys for Defendants

JUAN MANUEL NUNEZ, individually,

JUAN MANUEL NUNEZ, individually and
doing business as **ACEQUIA CEMENT**, and

ACEQUIA CEMENT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES, in their
capacities as Trustees of the **LABORERS**
HEALTH AND WELFARE TRUST
FUND FOR NORTHERN
CALIFORNIA; LABORERS
VACATION-HOLIDAY TRUST FUND
FOR NORTHERN CALIFORNIA;
LABORERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA; and
LABORERS TRAINING AND
RETRAINING TRUST FUND FOR
NORTHERN CALIFORNIA,

Plaintiffs,

v.

JUAN MANUEL NUNEZ, individually,
JUAN MANUEL NUNEZ, individually
and doing business as **ACEQUIA**
CEMENT, and **ACEQUIA CEMENT**

Defendants.

CASE NO.: CV 08 3510 CRB

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS FOR IMPROPER
VENUE, FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE
GRANTED, OR, MOTION FOR A MORE
DEFINITE STATEMENT

[*FRCP*, Rules 12(b)(3), (6), 12(e)]

DATE: November 7, 2008

TIME: 10:00 a.m.

CTRM: 8, 19th Floor

JUDGE: Hon. Judge Charles R. Breyer

MOVING PARTY:

DEFENDANTS, JUAN MANUEL NUNEZ and
ACEQUIA CEMENT

I

INTRODUCTION

Defendants, **JUAN MANUEL NUNEZ** and **ACEQUIA CEMENT**, hereby respectfully submit this Memorandum of Points and Authorities in Support of his Motion To Dismiss For Improper Venue, Failure To State A Claim Upon Which Relief Can Be Granted, Or, Motion For A More Definite Statement. Defendants request that this Motion be granted and the action be dismissed.

II

LEGAL ARGUMENT

1. PLAINTIFFS' COMPLAINT MUST BE DISMISSED BASED ON IMPROPER VENUE [FRCP, RULE 12(b)(3)]

Pursuant to 28 U.S.C. §§ 1391(a), 1404(a), 1406(a) and 1412, as well as *Federal Rules of Civil Procedure*, Rule 12(b)(3), Defendants move for dismissal of this action based upon improper venue. Alternatively, Defendants request that this action be transferred to the United States District Court for the Eastern District of California.

On July 22, 2008, Plaintiffs filed their Complaint herein. Attached to the Complaint as Exhibit B is a document which purports to be signed by Defendants with the address of 1992 Gentle Creek, Suisun, California 94534, which is in the County of Solano, State of California. Defendants reside in the County of Solano, State of California.

Given the fact that Solano County is in the Eastern District of California, Plaintiffs' Complaint herein has been brought in the wrong and improper venue. Consequently, Defendants request that this action be dismissed based on the wrong and improper venue, or,

alternatively, be transferred to the Eastern District.

2. PLAINTIFFS' COMPLAINT MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED [FRCP, RULE 12(b)(6)]

Even if Plaintiffs were to have properly brought this action, their Complaint must be dismissed pursuant to *FRCP*, Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

In the unverified Complaint, Plaintiffs allege three claims, entitled: (1) breach of contract, (2) actual damages for breach of contract, and (3) damages and equitable relief for breach of fiduciary duty. Within the Complaint, Plaintiffs refer to a written "Trust Agreement", "written collective bargaining agreement, or "Master Agreement" (page 2, lines 9-10, 24-25, page 3, lines 2-3). Plaintiffs allege that these agreement(s) are attached as Exhibit A; however the Complaint that was served had no such attachments, if any (see accompanying Declaration of Randy M. Andrus hereto).

Accordingly, this Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted must be granted.

3. ALTERNATIVELY, PLAINTIFFS MUST BE ORDERED TO PROVIDE A MORE DEFINITE STATEMENT [FRCP, RULE 12(e)]

For the same reasons set forth above, in the alternative, Defendants' Motion For A More Definite Statement must be granted. Accordingly, in the alternative, Defendant requests this Motion be granted.

Randy M. Andrus, Esq. (116745)

ANDRUS & ASSOCIATES

620 Coolidge Drive, Suite 165

Folsom, California 95630-3183

Telephone: (916) 608-9090

Attorneys for Defendants

JUAN MANUEL NUNEZ, individually,

JUAN MANUEL NUNEZ, individually and

doing business as **ACEQUIA CEMENT**, and

ACEQUIA CEMENT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES, in their)

capacities as Trustees of the **LABORERS**)

HEALTH AND WELFARE TRUST)

FUND FOR NORTHERN)

CALIFORNIA; LABORERS)

VACATION-HOLIDAY TRUST)

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PENSION TRUST FUND FOR)

NORTHERN CALIFORNIA; and)

LABORERS TRAINING AND)

RETRAINING TRUST FUND FOR)

NORTHERN CALIFORNIA,)

Plaintiffs,)

v.)

JUAN MANUEL NUNEZ, individually)

JUAN MANUEL NUNEZ, individually)

and doing business as **ACEQUIA**)

CEMENT, and **ACEQUIA CEMENT**)

Defendants.)

CASE NO.: CV 08 3510 CRB

DECLARATION OF RANDY M. ANDRUS

IN SUPPORT OF MOTION TO DISMISS

FOR IMPROPER VENUE, FAILURE TO

STATE A CLAIM UPON WHICH RELIEF

CAN BE GRANTED, OR, MOTION FOR A

MORE DEFINITE STATEMENT

[*FRCP*, Rules 12(b)(6), 12(e)]

DATE: November 7, 2008

TIME: 10:00 a.m.

CTRM: 8, 19th Floor

JUDGE: Hon. Judge Charles R. Breyer

MOVING PARTY:

DEFENDANTS, JUAN MANUEL NUNEZ and
ACEQUIA CEMENT

1
2 I, **RANDY ANDRUS**, state and declare:

3 1. I am the attorney for Defendants, **JUAN MANUEL NUNEZ** and **ACEQUIA**
4 **CEMENT** to the within action. As to the facts stated above, the same are true and correct to
5 the best of my own personal knowledge. If sworn as a witness thereto, I could and would
6 truthfully and competently testify thereto. Submitted herewith and in support of said Motion,
7 are true and correct copies of what the Exhibit purports to be.
8

9 2. I submit that good cause exists for the issuance of an Order granting this Motion
10 to Dismiss.

11 3. **EXHIBIT A** hereto is a copy of what was served and provided to me on behalf
12 of my clients. I note that within the Complaint there are references to various “agreements”,
13 including an Exhibit A; however, no Exhibit A was provided.
14

15 I declare under penalty of perjury that the foregoing is true and correct and that this
16 Declaration was executed by me on August 27, 2008 at Folsom, California.
17

18
19 /s/
20 **RANDY M. ANDRUS**
21

008 Page 9 of 20

ORIGINAL
FILED
08 JUL 22 2010
RICHARD W. VERNON
COURT CLERK
CLERK OF COURT
CLERK OF COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRB

CV 08

3510

**COMPLAINT FOR BREACH OF
CONTRACT, DAMAGES, AND
BREACH OF FIDUCIARY DUTY
(ERISA 29 U.S.C. §1001, et seq., 29
U.S.C. §185)**

V.

Defendants.

JURISDICTION AND INTRADISTRICT ASSIGNMENT

I.

This action arises under and is brought pursuant to section 502 of the Employee Retirement Income Security Act, as amended (ERISA) (29 U.S.C. § 1132), and section 301 of the Labor Management Relations Act (LMRA) (29 U.S.C. § 185). Venue properly lies in this district court

**WEINBERG, ROGER &
ROSENFELD**
A Professional Corporation
1001 Marina Village Parkway
Suite 200
Alameda, CA 94501-1091
(510) 337-1001

COMPLAINT FOR BREACH OF CONTRACT, DAMAGES, AND BREACH OF FIDUCIARY DUTY

EXHIBIT

A

1 since contributions are due and payable in the County of San Francisco. Therefore, intradistrict
2 venue is proper.

3 PARTIES

4 II.

5 At all times material herein, Plaintiffs The Board Of Trustees were Trustees of the Laborers
6 Health and Welfare Trust Fund for Northern California; Laborers Vacation-Holiday Trust Fund for
7 Northern California; Laborers Pension Trust Fund for Northern California; and Laborers Training
8 And Retraining Trust Fund For Northern California. At all times material herein, each of the
9 above-named Trust Funds was, and now is, an employee benefit plan created by a written Trust
10 Agreement subject to and pursuant to section 302 of the Labor Management Relations Act (29
11 U.S.C. § 186), and a multi-employer employee benefit plan within the meaning of sections 3, 4 and
12 502 of ERISA (29 U.S.C. §§ 1002, 1003 and 1132). Each of the above-named Trust Funds is
13 administered by a Board of Trustees which may bring this action in the name of the Trust Funds
14 pursuant to the express provisions of the Trust Agreements. All of the above named Trust Funds
15 and their respective Board of Trustees shall hereinafter be designated collectively as "Plaintiffs".

16 III.

17 At all times material herein, Juan Manuel Nunez, individually, Juan Manuel Nunez,
18 individually and doing business as Acequia Cement, and Acequia Cement (hereinafter referred to
19 as "Defendants"), have been employers within the meaning of section 3(5) and section 515 of
20 ERISA (29 U.S.C. §§ 1002(5), 1145) and employers in an industry affecting commerce within the
21 meaning of section 301 of the LMRA (29 U.S.C. § 185).

22 ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF

23 IV.

24 At all relevant times, Defendants were signatory and bound to a written collective
25 bargaining agreement with the Northern California District Council of Laborers (hereinafter
26 "Union"), a labor organization within the meaning of section 301 of the Labor Management
27 Relations Act (29 U.S.C. § 185). Defendants became subject to all the terms and conditions of the
28 Laborers Master Agreement (hereinafter "Master Agreement" or "Agreement") by virtue of

1 signing a Memorandum of Agreement (hereinafter "Memorandum Agreement") with the Union,
 2 which incorporated by reference the Master Agreement. A true and correct copy of said Master
 3 Agreement is attached hereto as Exhibit "A" and a true and correct copy of the Memorandum
 4 Agreement is attached hereto as Exhibit "B", both of which are incorporated by reference herein.
 5 The Master Agreement by its terms incorporates the various Trust Agreements establishing each of
 6 the Trust Funds. By said Master Agreement, Defendants promised that it would contribute and pay
 7 to Plaintiffs the hourly amounts required by said Agreements for each hour paid for or worked by
 8 any of its employees who performed any work covered by said Agreements, and that it would be
 9 subject to and bound by all of the terms, provisions, and conditions of the Trust Agreements as
 10 incorporated by the terms of the Master Agreement.

11 V.

12 The above-mentioned Agreements provide for prompt payment of all employer
 13 contributions to the various Trust Funds and provide for the payment of interest on all delinquent
 14 contributions, attorneys' fees, and other collection costs, and for the audit of the signatory
 15 employer or employers' books and records in order to permit the Plaintiffs to ascertain whether all
 16 fringe benefit contributions have been timely paid as required by the applicable labor agreements
 17 and law.

18 FIRST CLAIM FOR RELIEF 19 (BREACH OF CONTRACT)

20 VI.

21 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

22 VII.

23 Pursuant to the Master Agreement and the Trust Agreements, an audit of the books and
 24 records of Defendants for the period of January 2005 to December 2006 was conducted, which
 25 revealed that fringe benefit contributions to the Trust Funds have not been submitted as required by
 26 said agreements.

26 VIII.

27 Demand has been made of Defendants for payment of the amounts determined to be due
 28 and owing pursuant to the audit, and Defendants have refused to pay such amounts and there is

1 now due, owing and unpaid to Plaintiff Trust Funds from Defendants, fringe benefits contributions
2 in the amount of \$96,929.23.

3 IX.

4 Plaintiffs are the intended third-party beneficiaries of the Agreement, but Trust Fund
5 contribution delinquencies are excluded from the arbitration provisions of the Agreement.

6 X.

7 Plaintiffs have complied with all conditions on their part to be performed under the terms of
8 the applicable agreements.

9 XI.

10 Plaintiffs are entitled to reasonable attorneys' fees, interest, and other reasonable expenses
11 incurred in connection with this matter due to Defendants' failure and refusal to pay all fringe
12 benefit contributions due and owing pursuant to the terms of the applicable Labor Agreements,
13 Trust Agreements, and ERISA section 502(g)(2) (29 U.S.C. § 1132(g)(2)).

14 **SECOND CLAIM FOR RELIEF**
15 **(ACTUAL DAMAGES FOR BREACH OF CONTRACT)**

16 XII.

17 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

18 XIII.

19 Plaintiffs have conducted a study to ascertain the costs of collections for delinquent
20 contributions and have found it to be approximately twelve percent (12%) of the contributions
21 collected by the Trust Funds.

22 XIV.

23 Defendants have failed, neglected and refused to make timely fringe benefit contributions
24 as required by the applicable Master Agreement and Trust Agreements, and has caused Plaintiffs
25 actual damages to be proven at the time of trial, and which are estimated to be \$96,929.23.

26 **THIRD CLAIM FOR RELIEF**
(DAMAGES AND EQUITABLE RELIEF FOR BREACH OF FIDUCIARY DUTY)

27 XV.

28 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

XVI.

Defendants have failed, neglected or refused to make timely fringe benefit contributions to the Trust Funds as required by the applicable collective bargaining agreements and Trust Agreements.

XVII.

Defendants' neglect or refusal to make timely fringe benefit contributions and reports pursuant to the terms of the above-mentioned Agreements constitutes a violation of ERISA section 515 (29 U.S.C. § 1145).

XVIII.

Defendants, in agreeing to the terms and conditions of the aforementioned Trust Agreements, assumed a fiduciary duty to Plaintiffs, which required Defendants to submit timely and accurate reports of hours worked or amounts due, together with payments to Trust Funds. Defendants exercised control over any contributions due, which are assets of Trust Funds, and Defendants were fiduciary as defined by ERISA section 3(21) (29 U.S.C. § 1002(21)).

XIX.

The actions of Defendants complained of herein constitute a violation of fiduciary duties as defined by ERISA, 29 U.S.C. §§ 1001, et seq.

XX.

Unless enjoined by this Court, Defendants will continue to fail, neglect, or refuse to remit appropriate fringe benefit contributions to the Trust Funds and thereby cause Plaintiffs irreparable harm for which there exists no adequate remedy at law.

WHEREFORE, Plaintiffs pray judgment against Defendants, Juan Manuel Nunez, individually, Juan Manuel Nunez, individually and doing business as Acequia Cement, and Acequia Cement, as follows:

1. That Defendants be ordered to pay contributions in the amount of \$96,929.23, plus interest thereon;

2. That Defendants be ordered to pay actual damages in the amount of

1 \$11,631.51;

2 3. That this Court issue an Order directing and permanently enjoining Defendants to
3 submit to the Trust Funds, all reports and contributions due and owing by Defendants, plus interest,
4 attorneys' fees, and costs as provided in ERISA sections 502(a)(3) and (g)(2) (29 U.S.C. §
5 1132(a)(3), (g)(2));

6 4. That this Court issue an Order permanently enjoining Defendants for so long as it
7 remains obligated to contribute to the Trust Funds, from failing, neglecting, or refusing to timely
8 submit required monthly contributions reports and payments as required by the terms of the
9 collective bargaining agreements, Trust Agreements and ERISA sections 502(a)(3) and (g)(2) (29
10 U.S.C. § 1132(a)(3), (g)(2));

11 5. That Defendants be ordered to pay attorney's fees;

12 6. That Defendants be ordered to pay costs of suit herein; and

13 7. That this Court grant such further relief as this Court deems just and proper.

14 8. That this Court retain jurisdiction of this matter to enforce the Order compelling an
15 Audit and payment of all amount found due and owing.

16 Dated: July 16, 2008

17 WEINBERG, ROGER & ROSENFELD
18 A Professional Corporation

19 By: 

20 CONCEPCION E. LOZANO-BATISTA
21 Attorneys for Plaintiffs

22 119045/499848

Dated: This 2nd day of FEBRUARY, 2004
 Effective: This 2nd day of FEBRUARY, 2004

NORTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS

By [Signature]
 José A. Moreno, Business Manager

LOCAL UNION NO 304

By FERNANDO ESTRADA, FIELD REP.
 Title [Signature]

ACEQUIA CEMENT
 (Name of individual employer and/or Association)

JUAN M. NUNEZ [Signature]
 (Signature of individual employer or Authorized Representative)

By OWNER
 Title

Contractor's License No 790888

Address 1992 GENTLE CREEK

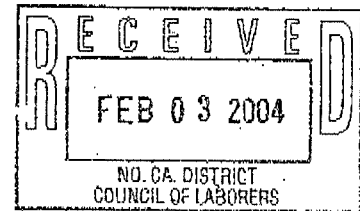
City & State SUISUN, CA Zip 94534-364

Telephone Number & Area Code (707) 864-1391

Trust Fund Copy

This Agreement shall remain in full force and effect until June 30, 2006, and shall continue thereafter for the term of any future modifications, changes, amendments, supplements, extensions, or renewals of or to said Master Agreement which may be negotiated between the parties thereto unless either party to this Memorandum Agreement gives written notice to the other of the desire to change or cancel not more than ninety (90) days nor less than sixty (60) days prior to June 30, 2006, or June 30th of any year in which the Master Agreement may terminate.

38015-CO
 B-20
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38015-CO

EXHIBIT B

Randy M. Andrus, Esq. (116745)

ANDRUS & ASSOCIATES

620 Coolidge Drive, Suite 165

Folsom, California 95630-3183

Telephone: (916) 608-9090

Attorneys for Defendants

JUAN MANUEL NUNEZ, individually,

JUAN MANUEL NUNEZ, individually and

doing business as **ACEQUIA CEMENT**, and

ACEQUIA CEMENT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES, in their) **CASE NO.: CV 08 3510 CRB**
capacities as Trustees of the **LABORERS**)
HEALTH AND WELFARE TRUST)
FUND FOR NORTHERN) **[PROPOSED] ORDER RE MOTION**
CALIFORNIA; LABORERS) **TO DISMISS FOR IMPROPER VENUE,**
VACATION-HOLIDAY TRUST) **FAILURE TO STATE A CLAIM UPON**
FUND FOR NORTHERN) **WHICH RELIEF CAN BE GRANTED, OR,**
CALIFORNIA; LABORERS) **MOTION FOR A MORE DEFINITE**
PENSION TRUST FUND FOR) **STATEMENT**
NORTHERN CALIFORNIA; and)
LABORERS TRAINING AND) [FRCP, Rules 12(b)(3), (6), 12(e)]
RETRAINING TRUST FUND FOR)
NORTHERN CALIFORNIA,)

Plaintiffs,

v.

JUAN MANUEL NUNEZ, individually,)
JUAN MANUEL NUNEZ, individually)
and doing business as **ACEQUIA**)
CEMENT, and **ACEQUIA CEMENT**)

Defendants.

DATE: November 7, 2008

TIME: 10:00 a.m.

CTRM: 8, 19th Floor

JUDGE: Hon. Judge Charles R. Breyer

MOVING PARTY: DEFENDANTS, JUAN MANUEL NUNEZ and
ACEQUIA CEMENT

1 Defendants', **JUAN MANUEL NUNEZ** and **ACEQUIA CEMENT**, Motion To
2 Dismiss For Improper Venue, Failure To State A Claim Upon Which Relief Can Be Granted, Or,
3 Motion For A More Definite Statement came on regularly for hearing before the Court on
4 November 7, 2008, in Courtroom 8, the Honorable Judge Charles R. Breyer, judge presiding.

5 The Court having duly reviewed and considered the moving and any opposing papers,
6 together with those papers contained in the Court's file, and for good cause appearing, rules and
7 orders as follows:
8

9 **IT IS HEREBY ORDERED ADJUDGED, AND DECREED** as follows:

10 Defendants' Motion To Dismiss For Improper Venue, Failure To State A Claim Upon
11 Which Relief Can Be Granted, Or, Motion For A More Definite Statement is **GRANTED**
12 [*FRCP*, Rules 12(b)(3), (6), 12(e)].
13

14 **IT IS SO ORDERED.**
15

16 **DATED:**

17 JUDGE, UNITED STATES DISTRICT COURT
18
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Randy M. Andrus, Esq. (116745)
ANDRUS & ASSOCIATES
620 Coolidge Drive, Suite 165
Folsom, California 95630-3183
Telephone: (916) 608-9090

Attorneys for Defendants
JUAN MANUEL NUNEZ, Individually,
JUAN MANUEL NUNEZ, individually and
doing business as **ACEQUIA CEMENT**, and
ACEQUIA CEMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES, in their) **CASE NO.: CV 08 3510 CRB**
capacities as Trustees of the **LABORERS**)

HEALTH AND WELFARE TRUST FUND)
FOR NORTHERN CALIFORNIA;) **PROOF OF SERVICE**

LABORERS VACATION-HOLIDAY)

TRUST FUND FOR NORTHERN)

CALIFORNIA; LABORERS PENSION)

TRUST FUND FOR NORTHERN)

CALIFORNIA; and LABORERS)

TRAINING AND RETRAINING TRUST)

FUND FOR NORTHERN CALIFORNIA,)

Plaintiffs,

v.

JUAN MANUEL NUNEZ, individually,)

JUAN MANUEL NUNEZ, individually and)

doing business as **ACEQUIA CEMENT**, and)

ACEQUIA CEMENT)

Defendants.

DATE: November 7, 2008

TIME: 10:00 a.m.

CTRM: 8, 19th Floor

JUDGE: Hon. Judge Charles R. Breyer

PROOF OF SERVICE

I declare that:

I am employed in the County of Sacramento, California. I am over the age of eighteen years and not a party to the within cause; my address is 620 Coolidge Drive, Suite 165, Folsom, California 95630.

On August 27, 2008, I served the following:

- **NOTICE OF MOTION AND MOTION TO DISMISS FOR IMPROPER VENUE, FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, OR, MOTION FOR A MORE DEFINITE STATEMENT**
- **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FOR IMPROPER VENUE, FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, OR, MOTION FOR A MORE DEFINITE STATEMENT**
- **DECLARATION OF RANDY M. ANDRUS IN SUPPORT OF MOTION TO DISMISS FOR IMPROPER VENUE, FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, OR, MOTION FOR A MORE DEFINITE STATEMENT**
- **[PROPOSED] ORDER RE MOTION TO DISMISS FOR IMPROPER VENUE, FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, OR, MOTION FOR A MORE DEFINITE STATEMENT**

by delivering as noted below:

XX MAIL, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail, at Folsom, California.

 FACSIMILE TRANSMISSION

 HAND DELIVERED

 OVERNIGHT EXPRESS DELIVERY (via Federal Express)

addressed as follows:

Barry E. Hinkle, Esq.

Patricia A. Davis, Esq.

Concepcion E. Lozano-Batista, Esq.

WEINBERG, ROGER & ROSENFELD

1 **A Professional Corporation**
2 **1001 Marina Village Parkway, Suite 200**
3 **Alameda, CA 94501-1091**
4 **Telephone: (510) 337-1001**
5 **Facsimile: (510) 337-1023**

6 I declare under penalty of perjury that this declaration is true and correct, and was
7 executed on August 27, 2008, at Folsom, California.

8 /s/
9 **RANDY M. ANDRUS**